

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 175 of 1992

with

CRIMINAL MISC.APPLICATION No 722 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

and

MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPENDRAKUMAR H. PRAJAPATI

Versus

STATE OF GUJARAT

CORAM;MR. JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

Date of decision:24/09/96

Appearance:

Mr. A.D. Shah, for the appellant.

Mr. A.J. Desai, A.P.P. for the respondent.

ORAL JUDGMENT:(Per Pandya, J.)

The accused has been convicted by the learned Additional Sessions Judge, Kheda at Nadiad under the provisions of Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act') alongwith the provisions of Sections 66(1)(b) and 65E of the Bombay Prohibition Act,1949 by his judgment dated 18-2-1992. The learned Additional Sessions Judge awarded 10 years rigorous imprisonment and a fine of Rs.1 lakh. No separate sentence came to be awarded for offences under the Bombay Prohibition Act.

Learned Advocate Mr. A.D.Shah appearing for the accused-appellant drew our attention to the deposition of the complainant- a PSI. He has clearly stated in his deposition Exh.13 as witness no.1 for the prosecution that on 16-3-1988 when he was discharging his duty as a PSI, he alongwith Police Constable Valabhai Hirabhai went about patrolling in village Hirpur. When they came near to the new bus stand, they came to know that at a nearby Pan shop, narcotic substances like charas, opium etc is being sold. They, therefore, raided the premises and recovered about 10 grams of opium and two small pills of roughly one gram stated to be that of charas. However, in the cross examination of the witness at page 20 after leaving about ten lines, we find the very PSI admitting that he carried out the proceedings of the raid and all other formalities as if it was an offence under the Prohibition Act. Further, he categorically admits that he had not carried out the proceedings or the investigation under the provisions of the NDPS Act.

Obviously, therefore, there is no question of his having complied with the mandatory requirement of Section 50 read with Sections 41 and 42 of the NDPS Act when he was not mindful of the fact whether provisions of NDPS Act would apply and this is clearly to be found in the said admission during cross-examination.

It is a settled position of law that if the said requirement is not complied with, the prosecution will fail, AIR 1994 SC 1872 BALBIR SINGH'S case is the citation if required. Later on, no doubt, the Honourable Supreme Court has expressed the opinion to the effect that looking to the circumstances of each case, this point may be decided. However, as noted above, far from there being any circumstance pleaded on behalf of the prosecution, the PSI who carried out the raid had done so under the provisions of the Prohibition Act. We, therefore, accept the submission of the learned Advocate Shri A.D.Shah and allow the appeal.

The appeal is accordingly allowed. The order of conviction passed by the trial Court is set aside. The accused is acquitted. The accused being on bail, the bail bond shall stand cancelled.

sf-njp

